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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. 891.

LOCAL UNION 429, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A. F. OF L., an Unincorporated Labor Organization, and W. D. COLLINS, J. T. ROLLAND, and FRED BASKIN, Who Are Sued Individually and as Members and Representatives of a Class Consisting of Members of the Said Labor Organization, and T. P. LOFTIS, a Citizen and Resident of Davidson County, Tennessee, and SANFORD ALEXANDER, a Citizen and Resident of Davidson County, Tennessee, the Said Defendants Loftis and Alexander Being Officials of the Said Defendant Union, NASHVILLE BUILDING AND CONSTRUCTION TRADE COUNCIL, Its Affiliated Unions, etc., et al.,

Petitioners,

v.

FARNSWORTH & CHAMBERS COMPANY, INC., a Corporation Organized Under the Laws of the State of Delaware,

Respondent.

PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of the State of Tennessee.

CECIL D. BRANSTETTER,
104 Stahlman Building,
Nashville, Tennessee,
Attorney for Petitioners.

MOORE, CROWNOVER, BRANSTETTER & FOLK,
Of Counsel.

ST. LOUIS LAW PRINTING CO., 415 North Eighth Street. CEntral 1-4477.

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Petitioners,

v.

FARNSWORTH & CHAMBERS COMPANY, INC., a Corporation Organized Under the Laws of the State of Delaware,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of the State of Tennessee.

To the Honorable the Justices of the Supreme Court of the United States:

Petitioners pray that a Writ of Certiorari issue to review the decree of the Supreme Court of the State of Ten-

nessee entered on February 8, 1957, and amended on February 14, 1957, in the case there entitled Farnsworth & Chambers Co., Inc., v. Local Union 429, International Brotherhood of Electrical Workers, A. F. of L., etc., et al.

OPINION BELOW.

An opinion was entered by the Supreme Court of the State of Tennessee on February 8, 1957, and is reported in 57 ALC 441; 31 CCH Labor Cases 70,487 (not published as yet in Tenn. Reports or South Western Reports) (Printed in full in Appendix A).

JURISDICTION.

The decree of the Supreme Court of the State of Tennessee was entered on February 8, 1957, and amended February 14, 1957, and the procedendo ordered that the injunction issued by the Chancery Court for Sumner County, Tennessee, be made permanent and perpetual, and that the cause be remanded to said Court for execution of the decree and the collection of costs (R. 101, 102).

The jurisdiction of this Court is invoked under 28 U. S. C., § 1257 (3).

No petition for a rehearing was filed in the Supreme Court of the State of Tennessee, and, therefore, the decree entered on February 8, and amended on February 14, 1957, became final ten days from the date of entry thereof. Said decree is a final decree[1] since said decree made the injunction permanent and perpetual and remanded the same for enforcement and collection of costs, and was entered by the highest court of the State of Tennessee in which a decision could be had.

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[1] Gospel Army v. City of Los Angeles, 331 U. S. 543 (1947).

QUESTIONS PRESENTED.

1. Does the Labor Management Relations Act oust State courts of jurisdiction of a suit by an employer engaged in an activity affecting commerce within the contemplation of said Act when the complaint alleges as the basis for a blanket injunction against peaceful and truthful picketing that the defendant unions, members, agents and employees of the complainant as defined in said Act are engaged in activities defined by the Labor Management Relations Act as an unfair labor practice?

2. Does Section 14 (b) of the Labor Management Relations Act cede to the State courts jurisdiction to enjoin peaceful and truthful picketing on the complaint of an interstate employer that State "procurement of breach of contract statutes"[2] and so-called "right to work laws"[3] are being violated by labor unions, their members and employees of the complainant as defined in said Act when the activities so enjoined constitute either protected activity under Sections 7 and 13 or unfair labor practices under Section 8 of the Labor Management Relations Act of 1947?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The Constitutional provision involved is Article VI, Clause 2:

> "This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and

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[2] Full text of Tennessee "Procurement of Breach of Contract Statute" is set out in Appendix B.

[3] Full text of Tennessee so-called "right to work law" is set out in Appendix C.

all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the contrary notwithstanding."

The statutory provisions involved are Sections 2 (1), 2 (2), 2 (3), 2 (4), 2 (9), 7, 8 (a) (1) (2) (3), 8 (b) (1) (2) (4) (A) (B) (C), 10 (a), 14 (b) of the Labor Management Relations Act, 61 Stat. 136, 29 U. S. C. 151 et seq. They are printed in Appendix D.

STATEMENT OF THE CASE.

The respondent, Farnsworth & Chambers Company, Inc., organized under the laws of the State of Delaware, qualified to do business in Tennessee, filed a class suit in the Chancery Court for Sumner County, Tennessee, against Local Union 429, International Brotherhood of Electrical Workers, and its officers, and an amended complaint against the Nashville Building and Construction Trade Council, its affiliated unions, officers, and members, seeking an injunction against peaceful and truthful picketing of the respondent. The respondent alleged in its complaint that it was the successful bidder on the Old Hickory Power House, a Federal project in Sumner County, Tennessee, and was awarded the contract by the United States Corps of Engineers (R. 6).

The complaint specifically alleged that:

". . . the admitted purpose with which the defendants have picketed and are picketing the Complainant's construction site is to force the Complainant to deny employment to all persons who do not hold membership in or are affiliated with the Defendant Labor Union. The Complainant further says that

it is the admitted purpose of the Defendant in picketing the Complainant's construction site to compel or induce the Complainant to join with the Defendant Local Union in an agreement providing for exclusion from employment as an electrician any person who does not hold membership in or is affiliated with the Defendant Labor Union."

"Complainant further says that the admitted purpose for which the Defendants are picketing the construction site is to induce the Complainant to breach its said contract of employment with the persons already in its employ as electricians and who are not members of Defendant Union . . ."

". . . the Defendant Loftis and other Union officials came to the office of Superintendent Joiner and insisted that only persons who are members of the Labor Union should be allowed to work at the construction site, to the exclusion of those persons working at that time who were not members of the Labor Union."

". . . that for the picketing of the Complainant's construction site the Trade Counsel [sic] and its members Unions have banded together in a conspiracy and confederacy to violate the injunction issued by this Court on October 14, 1954 and to violate the law of Tennessee by attempting to force the Complainant to hire only Union employees in violation of the Right to Work Law of this State and to procure the breach of Complainant's contract with its present employees."

"Complainant has refused to accede to the insistences of the Defendant, and . . . on October 12 at approximately 5:45 o'clock A. M. and prior to the beginning of the regular work day at 7:00 o'clock A. M., there appeared at the main entrance to the job site where the complainant's employees regularly

come to work two pickets carrying signs which on them said:

> 'This job employs no members of Electrical Local Union 429 Affiliated with Nashville Building Trades Counsel, [sic] A. F. of L.'

"And on the other side:

> 'This job does not work Union electricians, Local Union No. 429, picketed by Local Union 429.' "

"Since the beginning of the picketing many of Complainant's employees who are members of labor organizations have refused to cross the picket lines and Complainant has been unable to replace these employees with other employees with the result that the Complainant is unable to perform its construction job and is thereby suffering irrevocable injury for which it has no adequate remedy at law" (R. 7, 8, 9, 10, 11, 26).

Based upon the foregoing allegations an ex parte temporary injunction was issued by the Circuit Judge for Sumner County, Tennessee, on October 14, 1954, the same date the original bill was filed in the Chancery Court of said County, and enjoined the defendant unions, their officers, members, agents, and employees, from:

> " . . . picketing or directing the picketing or maintenance of picketing at or near the construction site of the Old Hickory Powerhouse, including all entrances and ways of ingress and egress thereto, and that the said defendants be enjoined from taking any steps seeking to induce the Complainant's employees not to work for the Complainant, or to hinder or to interfere with the said employees of the Complainant by picketing, persuasion, inducement or otherwise at the place aforesaid, or in their homes, or any other

place, or seeking in any way to persuade or induce Complainant's said employees from carrying out their contract of employment with complainant or from seeking in any way to persuade or induce Complainant not to carry out its contract of employment with its employees, . . . or in any way attempt to disrupt the normal and ordinary operation of the complainant's contracting business, . . ." (R. 11, 12, 13, 19, 20, 36).

.A stipulation was filed on March 14, 1956, in which it was agreed that "complainant, Farnsworth & Chambers Company, Inc., with reference to the original and amended bill in this cause is a business engaged in interstate commerce, or an activity affecting commerce, in contemplation of the Labor Management Relations Act of 1947 (29 U. S. C. A. 141, et seq.)" (R. 39).

The defendants and each of them then filed a demurrer to the original and amended bill in which it was set out that the State Court was "without jurisdiction of the subject matter of this suit, or the defendants named therein, jurisdiction being exclusively in the National Labor Relations Board pursuant to the Acts of Congress, particularly the National Labor Relations Act and the Labor Management Act, 29 USCA 141, et seq." (R. 40).

The demurrer was set down for argument on the 8th day of June, 1956, by the Chancery Court for Sumner County, Tennessee, and an order entered overruling the demurrer and holding that the State Court had jurisdiction of the parties and of the subject matter, and the rights of the parties to the suit having been determined, an appeal granted to the Supreme Court of the State of Tennessee (R. 41).

The appeal was heard in the Supreme Court of Tennessee on the 12th day of December, 1956, and an opinion

handed down on February 8, 1957, with a decree affirming the trial court, and a procedendo to the Chancery Court of Sumner County, Tennessee, under dates of February 8, 1957, and February 14, 1957, making the injunction permanent and perpetual and remanding the cause for enforcement and collection of costs (R. 101, 102).

FEDERAL QUESTIONS IN THE COURTS BELOW.

1. Throughout the proceedings below, both before the trial court and on appeal, the petitioners contended that exclusive primary jurisdiction of the controversy had been vested in the National Labor Relations Board pursuant to Acts of Congress, and particularly the Labor Management Relations Act, since the moving party itself had alleged that the defendants below were engaged in a protected activity or an activity defined as an unfair labor practice by National legislation.

(a) The demurrer filed by the petitioners in the Trial Court set out that ". . . this Honorable Court is without jurisdiction of the subject matter of this suit, or of the defendants named herein, jurisdiction being exclusively in the National Labor Relations Board pursuant to Acts of Congress, particularly the National Labor Relations Act and the Labor Management Act, 29 USCA 141 et seq." (R. 40).

(b) The contention was made in the Supreme Court of Tennessee that the state courts were without jurisdiction of the subject matter or the parties since the petitioners' activities were governed by Federal legislation and that the State court was without jurisdiction to issue the injunction under the allegations in the original bill of complaint. Specifically petitioners assigned as error in the Supreme Court of Tennessee that "The Chancery Court erred in holding that it

had jurisdiction of the subject matter of this suit and of the parties.

"This was error because under the Acts of Congress, exclusive jurisdiction of this cause was in the National Labor Relations Board" (R. 51, 64, 67).

2. The petitioners did not contend nor is there anything in the record as suggested in the opinion below, that the question involved dealt in any manner with common carriers or common carrier service. However, the Court below saw fit to speculate or comment on common carrier service in its opinion wherein it was stated:

> "The general rule that State Courts may grant injunctive relief against carriers applies not only to intra but also to interstate carriers. This equity jurisdiction of Chancery Court in this State was not superseded by our statutes relating to the Tennessee Public Service Commission, but was supplemented by one of these provisions. TCA. 65-1523" (Opinion of Supreme Court of Tennessee, Appendix A).

The contention of the petitioners was that the original bill of complaint and the amended bill of complaint showed on their faces that the subject matter of the complaint was not within the juirsdiction of the state courts, because they set forth statutory unfair labor practices, as to which the Act confers exclusive primary jurisdiction on the National Labor Relations Board (R. 40, 51). Nor was there any question raised, nor does the record support the discussion in the opinion by the Supreme Court of Tennessee dealing with union security agreements.[4] The record is barren of any reference, either in the orig-

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[4] *Algoma P. & V. Co. v. Wisconsin Employment Relations Board*, 336 U. S. 301 (1949)—apparently relied on by the Supreme Court of Tennessee, is not authority for the questions presented in this case.

inal bill of complaint or the demurrer on which final action of the Supreme Court of the State of Tennessee was taken is limited to Federal pre-emption and Federal rights asserted by a labor organization and employees of the respondent, asserted in the name of National Law (R. 40, 51).

REASONS FOR GRANTING THE WRIT.

1. The decision below, being based upon the assumption that if the petitioners or their members were engaged in an activity contrary to state law, that the cases of **Gibbony v. Empire Storage & Ice Company,**[5] **336 U. S. 490; Building Service Employees Union v. Gizzam, 339 U. S. 352,** and **Teamsters v. Hanky, 339 U. S. 470,** were controlling, is inconsistent with the decisions on that point in **Garner v. Teamsters C. and H. Union, 346 U. S. 485; Weber v. Anheuser-Busch, Inc., 348 U. S. 468; Building Trades Council v. Kinard Construction Company, 346 U. S. 933 (1954); U. M. W. v. Arkansas Oak Flooring Company, 351 U. S. 62,** and **Retail Clerks International Association, Local No. 560 et al. v. J. J. Newberry Company, a Corporation, Docket No. 597, October Term, 1956,** and decided by this Court **January 28, 1957; P. S. Guss v. Utah Labor Relations Board (U. S. Supreme Court, No. 280, March 25, 1957).**

2. The questions presented involve serious problems of the sort which have arisen and will continue to arise out of the interaction between the Labor Management Relations Act and more restrictive state statutes as these latter acts impinge upon employees with respect to the extent to which such employees are entitled by law to bargain and to exercise sanctions in protection of the continuation of their normal work opportunities. Whether the particu-

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[5] Footnote 9 in the *Weber* case, at p. 481, states, "But Gibbony was concerned solely with whether the state's injunction against picketing violated the Fourteenth Amendment. No question of federal pre-emption was before the Court; . . ."

lar subjects on which these employees seek to bargain, or the methods and means which they would use to further their objectives are within the protection of the national law or governed by the refinements of state law or the whims of state courts is a matter of profound national importance. In this light, this case presents the necessity of this Court giving to the courts of the several states more detailed criteria by which they are to scrutinize and evaluate claims or federal rights asserted before them by employees in the name of national law.

3. The injunction was directed against all picketing regardless of the purposes or objectives sought to be achieved by the picketing and was thus contrary to appropriate decisions of this Court and violated rights of employees and labor organizations given by the Labor Management Relations Act.

Under the opinion and decree of the Supreme Court of Tennessee any interstate employer can secure an injunction against peaceful picketing by a labor organization or employees of the interstate employer by simply alleging that such picketing is for the purpose of procuring a breach of individual contracts of employment or contrary to the so-called right to work laws[6] of the State and in this manner break a proper and legitimate strike and destroy the rights of labor organizations and employees as guaranteed by Federal legislation. Injunctions so issued defeat the purposes of the Act and its uniform administration by the specialized Board created for that purpose.

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[6] The Tennessee so-called right to work law is directed toward the employer. *Dukes v. Local Union No. 137 et al., 191 Tenn. 495, 499 (1950);* Appendix "C".

ARGUMENT.

POINT NUMBER I.

The Bill of Complaint Charged an Unfair Labor Practice.

The respondent admitted by its original bill of complaint and its amended bill of complaint and otherwise in the courts of Tennessee that the petitioners were engaged in an activity defined in section 8 of the Labor Management Relations Act as an unfair labor practice (R. 6, 7, 8, 9, 10, 24, 25).

The same sort of unfair labor practice, to-wit, employer coercion, came before this Court in **Garner v. Teamsters Union, 346 U. S. 485.** The inability of the state court to adjudicate such charge is clearly set forth in the case of **Weber v. Anheuser-Busch, Inc.**, supra, at pages 475, 476:

> "A state may not enjoin under its own labor statute conduct which has been made an 'unfair labor practice' under the Federal statutes. Such was the holding in the Garner case, supra. The Court pointed out that exclusive primary jurisdiction to pass on the union's picketing is delegated by the Taft-Hartley Act to the National Labor Relations Board. See also Plankinton Packing Co. v. Wisconsin Employment Relations Board, 338 U. S. 953; Building Trades v. Kinard Construction Co., 346 U. S. 933. And in Capital Service, Inc., v. Labor Board, 347 U. S. 501, a picket line established at retail stores to induce the organization of a manufacturer's employees was enjoined by the State as contrary to the public policy. This Court granted a limited certiorari which assumed that exclusive jurisdiction over the subject matter was in the National Labor Relations Board. The Board was

allowed to obtain an injunction against enforcement of the conflicting state injunction."

The proper procedure for the state court is set up in this language of the **Weber** decision:

> "But where the moving party itself alleges unfair labor practices, where the facts reasonably bring the controversy within the sections prohibiting these practices, and where the conduct, if not prohibited by the Federal Act, may be reasonably deemed to come within the protection afforded by that Act, the State Courts must decline jurisdiction in deference to the tribunal which congress has selected for determining such issues in the first instance" (page 481).

Again in the **Garner case**, supra, at page 501, the Court stated:

> "On the basis of the allegations, the petitioners could have presented this grievance to the National Labor Relations Board. The respondents were subject to being summoned before that body to justify their conduct. We think the grievance was not subject to litigation in the tribunals of the state."

Section 10 (a) of the Labor Management Relations Act is determinative of the first point in petitioners' argument:

> "(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise; . . ."

POINTS II AND III.

Protected Activity on the Part of Labor Organizations and Employees.

The Supreme Court of Tennessee erroneously assumed in its opinion that the "demurrers filed to the original and supplemental bill raises one issue, that is, whether the courts of Tennessee have the power to enforce the right to work law, TCA. 50-208, or whether it was the intention of Congress in the enactment of the Labor Management Act (Taft-Hartley Law), 29 U. S. C. A. 141, to so exclusively pre-empt the field of labor management relations in interstate commerce as to remove the matter from the jurisdiction of the state courts" (First paragraph of opinion of Supreme Court of Tennessee, Appendix A).

In the assignments of error filed in the Supreme Court of Tennessee, the specific assignment was:

> "The Chancery Court erred in holding that it had jurisdiction of the subject matter of this suit and of the parties.
>
> "This was error because under the Acts of Congress, exclusive jurisdiction of this cause was in the National Labor Relations Board" (R. 51).

It was petitioners' insistence in the Trial Court and Appellate Court of the State of Tennessee that the protected or unprotected character of the union's conduct under section 7 of the Labor Management Relations Act must be determined by the National Board and not by the State Court.

Petitioners' second proposition has been answered by this Court in the case of **Weber v. Anheuser-Busch, Inc.**, supra, at pages 480 and 481, wherein it was stated:

> "Moreover, we must not forget that this case is not clearly one of 'unfair labor practices'. Certainly if

the conduct is eventually found by the National Labor Relations Board to be **protected** by the Taft-Hartley Act, the State cannot be heard to say that it is enjoining that conduct for reasons other than those having to do with labor relations. In Amalgamated Asso. v. Wisconsin Employment Relations Board, 340 U. S. 383, 95 L. Ed. 364, 71 S. Ct. 359, supra, the statute was directed at the preservation of the public utility services and not at maintenance of sound labor relations, but the state's injunction was reversed. Controlling and therefore superseding Federal power cannot be curtailed by the state even though the ground of intervention be different than that on which Federal supremacy has been exercised.

* * * * * * *

"We realize that it is not easy for a state court to decide, merely on the basis of a complaint and answer, whether the subject matter is the concern exclusively of the federal Board and withdrawn from the state . . . But where the moving party itself alleges unfair labor practices, where the facts reasonably bring the controversy within the sections prohibiting these practices, and where the conduct, if not prohibited by the Federal Act, may be reasonably deemed to come within the protection afforded by that Act, the State Court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance."

The injunction as issued in the case at bar was directed against all picketing regardless of the purposes or objectives sought to be achieved and "enjoined (petitioners) from picketing, maintaining, or directing the picketing or maintenance of pickets at or about the construction site of the (respondent) . . . and enjoining and restraining the said Defendants from taking any steps seeking to induce the Complainants' employees not to work for the Com-

plainant or to hinder or to interfere with the said employees of the Complainant by picketing, persuasion, inducement or otherwise at the place aforesaid, or in their homes, or any other place, . . ." (R. 11, 12, 13, 19, 20).

Under the injunction the petitioners, their agents, and employees of the respondent, could not talk to any employee of the respondent, go to his home or discuss labor management relations in any particular without being in violation of the injunction. The **Gizzam**, **Hanky** and **Gibbony** cases,[7] supra, relied on by the Supreme Court of the State of Tennessee to sustain the injunction, only enjoined picketing carried on for a particular purpose or objective. Therefore, even assuming that those cases were applicable to the case at bar in other respects, nevertheless, they would not be applicable on a proper construction of their language since in this case all picketing of every type and description and for whatever purpose or objective was enjoined.

Under the decision and decree of the Supreme Court of the State of Tennessee, an interstate employer may file its original bill of complaint alleging unfair labor practices as defined in the Labor Management Relations Act, or conduct which is defined in said Act as protected activity, obtain an ex parte injunction, post a Five Hundred Dollar Bond (R. 28, 29), sit back and refuse to take proof,[8] and enjoy the fruits of an injunction so obtained until the work involved in the project is completed, dismiss its suit on payment of nominal costs, and as a result, the purposes and intention of the Labor Management Relations Act are completely and totally frustrated.[9]

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[7] Note 5, *supra*.

[8] Witness that from the period October 14, 1954 to March 14, 1956, the Respondent took no proof (R. 36, 40, 41). Tennessee maintains separate law and equity courts and the practice requires proof in chancery by deposition.

[9] *Hill v. State of Florida, 325 U. S. 538.*

CONCLUSION.

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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CECIL D. BRANSTETTER,
104 Stahlman Building,
Nashville, Tennessee,
Attorney for Petitioners.

MOORE, CROWNOVER, BRANSTETTER & FOLK,
104 Stahlman Building,
Nashville, Tennessee,
Of Counsel.

Dated March 27, 1957.

APPENDIX A.

FARNSWORTH & CHAMBERS COMPANY, INC.,

v.

LOCAL UNION 429, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL, ETC., ET AL.

Sumner Equity.

Hon. S. A. Marable, Chancellor.

For Appellants:

Moore, Crownover, Branstetter & Folk,
Nashville, Tennessee.

For Appellees:

Bass, Berry & Sims,
Nashville, Tennessee.

Opinion.

The demurrers filed to the original and supplemental bill raises one issue, that is, whether the Courts of Tennessee have the power to enforce the right to work law, **TCA 50-208**, or whether it was the intention of Congress in the enactment of the Labor Management Act (Taft-Hartley Law), **29 U. S. C. A. 141**, to so exclusively pre-empt the field of Labor Management Relations in interstate commerce as to remove the matter from the jurisdiction of the State Courts.

The complainant, Farnsworth & Chambers Company, Inc., is a corporation organized under the laws of the State of Delaware, and qualified to do business in Tennessee, filed its original bill in the Chancery Court of Sumner County against the defendant, Local Union 429, International Brotherhood of Electrical Workers. A stipulation was

filed in which it was agreed that the complainant was a business engaged in interstate commerce, or an activity affecting commerce in contemplation of the **Labor Management Relations Act of 1947 (29 U. S. C. A. 141 et seq.).**

The purpose of the bill was to enjoin the defendant from picketing around the business of complainant at Gallatin.

It seems that before this a representative of the Labor Union approached the manager of complainant and protested that complainant was not employing union labor and threatened to picket the plant if union laborers were not employed. Complainant refused to employ union labor and picketing resulted.

Thereupon this injunction bill was filed. The Chancellor on the hearing of the bill and demurrers sustained the injunction.

The general rule that State Courts may grant injunctive relief against carriers applies not only to intra but also to interstate carriers. This equity jurisdiction of Chancery Court in this State was not superseded by our statutes relating to the Tennessee Public Service Commission, but was supplemented by one of these provisions. **TCA. 65-1523.**

The appellants, however, deny that such jurisdiction exists in this case. As we understand, they do not deny that their conduct violated the law of this State. They undertake to justify their conduct upon the claim that the employees were governed by the provisions of the National Labor Relations Board.

Congress, in the enactment of the Wagner Act and the Taft-Hartley Law, did not enter upon the entire field of labor management relations and exclusively pre-empt state action therein but rather entered a limited area of the field of labor management relations. **Weber v. Anheuser-Busch, 348 U. S. 468.**

"Provisions of the Taft-Hartley Act make it even clearer than the National Labor Relations Act that the States are left free to pursue their own more restrictive policies in the matter of union-security agreements . . ."

"Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.' "

Algoma P. & V. Co. v. Wisconsin Emp. Rel. Bd., 336 U. S. 313, 314.

Since the enactment of the Taft-Hartley Act, the court of last resort of every State in which there exists an open shop statute has upheld the power and duty of the State Courts to enforce the provisions of the statute.

Mascari v. International Brotherhood, 187 Tenn. 355; Woodward v. Collier, Georgia (1953), 33 LRRM 2247; Town House, Inc., of Boston v. Hurley, Mass. (1950), 25 LRRM 2652; Construction Labor Union etc. et al. v. Stephenson, Texas (1950), 25 LRRM 2228; Ostroff v. Laundry and Dye Work Driver Local Union, Wash. (1950), 27 LRRM 2232: also Wisconsin, Arizona, Nevada, Arkansas, Virginia and North Dakota.

It seems clear to us from the language of the Taft-Hartley Law, and from the Wagner Act, which preceded the Taft-Hartley Law, that it was not the purpose of the Federal Congress to usurp the entire field of labor management relations in Interstate Commerce, but much is reserved to the State. By entering upon a field of legislation, the Federal Congress does not, ipso facto, usurp or pre-empt the entire field, but only insofar as the Federal Government specifically regulates activity in that field is the State precluded from action. See **Allen-Bradley Local**

No. 1111 v. Wis. Emp. Rel. Bd., 315 U. S. 740; Giboney v. Empire Storage & Ice Co., 336 U. S. 490; Garner v. Teamsters, C. & H. Union, 346 U. S. 485.

When a suit upon a matter of labor relation is brought in a state court and the court's jurisdiction is denied, the court must determine the question for itself. It cannot stop and refer the question to the board; nor will a federal court interfere to forestall the state court's determination. **Amalgamated C. & W. of A. v. Richmond Bros., 348 U. S. 511.**

In this case the Court said:

> "We cannot assume that this confidence (in state courts) has been misplaced. Neither the course of this case, nor the history of state court actions since the decision in Garner v. Teamsters C. & H. Local Union, 346 U. S. 485, 98 L. ed. 228, 74 S. Ct. 161, demonstrate recalcitrance on the part of state courts to recognize the rather subtle line of demarcation between exclusive federal and allowable state jurisdiction over labor problems."

It seems from the decisions that matters of local concern, such as labor relations, over which the several states have exercised jurisdiction, remain in state power unless and until they are pre-empted by Congress, by virtue of the Commerce and Supremacy clauses of the federal Constitution; and in a given case the intent of Congress to exclude state power must be clearly manifested. **Allen-Bradley Local U. E. RM. [sic] W. v. Wisconsin Employment Relations Board, 315 U. S. 740.**

In order to exclude state power over a given type of conduct in labor relations, two things must concur: (1) Congress must clearly have manifested an intent to pre-empt such conduct and withdraw it from state control; and (2) it must have provided a federal remedy for injury caused by such conduct. In the absence of such remedy,

such conduct will be subject to concurrent jurisdiction of both the state's and the federal authority. **United Constr. W. v. Laburnum Constr. Corp., 347 U. S. 656.**

In **Mascari v. International Brotherhood, etc., 187 Tenn. 355,** this Court says:

> "Ours is a dual system of Government and oftentimes Congress legislates on matters contrary and supplemental to State enactments. In the case of Bethlehem Steel Company et al. v. New York Labor Relations Board et al., 330 U. S. 767, 67 S. Ct. 1026, 1029, 91 L. Ed. 1234, 1245, Mr. Justice Jackson, in the course of his opinion said:
>
> " 'It long has been the rule that exclusion of state action may be implied from the nature of the legislation and the subject matter although express declaration of such result is wanting . . .'
>
> " 'In the National Labor Relations Act (29 U. S. C. A., sec. 151, et seq.), Congress has sought to reach some aspects of the employer-employee relation out of which such interferences arise. It has dealt with the subject or relationship but partially, and has left outside of the scope of its delegation other closely related matters. Where it leaves the employer-employee relation free of regulation in some aspects, it implies that in such matters federal policy is indifferent, and since it is indifferent to what the individual of his own volition may do we can only assume it to be equally indifferent to what he may do under the compulsion of the state.' "

It is the opinion that our Courts have jurisdiction in cases of this nature.

It results that we find no error in the decree of the Chancellor and it is affirmed.

.....

Prewitt, J.

APPENDIX B.

"Tennessee Breach of Contract Statute."

Section 47-1706 of the official Tennessee Code.

"47-1706. **Procurement of breach of contracts unlawful—Treble damages.**—It shall be unlawful for any person, by inducement, persuasion, misrepresentation, or other means, to induce or procure the breach or violation, refusal or failure to perform any lawful contract by any party thereto; and, in every case where a breach or violation of such contract is so procured, the person so procuring or inducing the same shall be liable in treble the amount of damages resulting from or incident to the breach of said contract; and the party injured by such breach may bring his suit for said breach and for such damages."

APPENDIX C.

"So-Called Right to Work Law."

Section 50-208 et seq. of the official Tennessee Code.

"50-208. **Denial of employment because of affiliation or nonaffiliation with labor union unlawful.**—It shall be unlawful for any person, firm, corporation or association of any kind to deny or attempt to deny employment to any person by reason of such person's membership in, affiliation with, resignation from, or refusal to join or affiliate with any labor union or employee organization of any kind.

"50-209. **Contracting for exclusion from employment because of affiliation or nonaffiliation with labor union unlawful.**—It shall be unlawful for any person, firm, corporation or association of any kind to enter into any contract, combination or agreement, written or oral, providing for exclusion from employment of any person because of membership in, affiliation with, resignation from, or refusal to join or affiliate with any labor union or employee organization of any kind.

"50-210. **Exclusion from employment for payment of or failure to pay union dues unlawful.**—It shall be unlawful for any person, firm, corporation or association of any kind to exclude from employment any person by reason of such person's payment of or failure to pay dues, fees, assessments, or other charges to any labor union or employee organization of any kind.

"50-211. **Application of preceding sections.**—The provisions of §§ 50-208—50-212 shall not apply to any lawful contract in force on February 21, 1947; but shall apply in all respects to contracts entered into thereafter, and to any renewal or extension of any existing contract."

APPENDIX D.

Sections of the Labor Management Relations Act.

"Sec. 2. When used in this Act—

"(1) The term 'person' includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

"2. The term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

"(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicity states otherwise and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed

by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

"(4) The term 'representatives' includes any individual or labor organization.

* * * * * * *

"(9) The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

Rights of Employees.

"Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

Unfair Labor Practices.

"Sec. 8. (a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

"(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided That, subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: . . . "

* * * * * * *

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

"(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership; * * *

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a

strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9;

* * * * * * *

Prevention of Unfair Labor Practices.

"Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise; Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency, jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases

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MAY 14 1957
JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956.

No. 891.

LOCAL UNION 429, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A. F. of L., *et al.*,
Petitioners,

vs.

FARNSWORTH AND CHAMBERS COMPANY, INC.,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO THE GRANTING OF A WRIT OF CERTIORARI.

WILSON SIMS,
1000 American Trust Building,
Nashville, Tennessee,
Attorney for Respondent.

BASS, BERRY & SIMS,
1000 American Trust Building,
Nashville, Tennessee,
Of Counsel.

E. L. MENDENHALL, INC., 1108 OAK STREET, KANSAS CITY 6, MO., HARRISON 1-3030

by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

* * * * * * *

"Sec. 14. * * *

"(b) Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

APPENDIX E.

Final Decrees of the Supreme Court of Tennessee.

"This cause coming on to be heard upon a transcript of the record from the Chancery Court of Sumner County, assignments of error, reply brief and argument of counsel, upon consideration whereof the Court is of opinion that in the decree of the Chancellor there is no error.

"It is therefore ordered and decreed by the Court that the decree of the Chancellor be in all things affirmed and that this cause be remanded to the Chancery Court of Sumner County for the execution of the decree of that Court; and for the collection of the cost of the Court below, for all of which let procedendo issue.

"The cost of this appeal will be paid by Local Union 429, I. B. E. W., A. F. of L., C. I. O., et al, principals; Cecil Branstetter, surety for which let execution issue. 2/8/57"

* * * * * * *

"It is hereby ordered and decreed that the decree entered in this cause on February 8, 1957, remanding the same to the Chancery Court for Sumner County, Tennessee, be amended by providing that since the rights of the parties have been determined, that the Chancery Court for Sumner County is to enter an order making the injunction permanent and perpetual. 2/14/57"

IN THE

SUPREME COURT OF THE UNITED STATES

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LOCAL UNION 429, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A. F. of L., *et al.*,
Petitioners,

vs.

FARNSWORTH AND CHAMBERS COMPANY, INC.,
Respondent.

BRIEF OF FARNSWORTH AND CHAMBERS COMPANY, INC.

QUESTION PRESENTED.

Has the Labor Management Relations Act so pre-empted the field of labor management relations in interstate commerce that State Courts are without power to enforce the provisions of State "right to work" laws?

STATEMENT OF THE CASE.

The respondent, Farnsworth and Chambers Company, instituted this suit in the State Courts of Tennessee charging that the defendant unions were picketing respondent's premises for the purpose of forcing respondent to violate the Tennessee right to work law (TCA 50-208 *et seq.*), the factual averments of the original bill being in part as follows:

> "On or about September 31st, defendant T. P. Loftis (business agent of the defendant, Electrical Workers Union) came to the office of complainant and * * * urged (complainant's) Superintendent Joyner to replace the electricians working for complainant at the job site with new employees who are members of the defendant union * * *
>
> "On the next day, defendant Loftis came back to Superintendent Joyner's office and again in a conference with Superintendent Joyner insisted that those persons working as electricians be replaced by members of the defendant Union.
>
> "Then later that same day * * * Loftis approached Superintendent Joyner and advised him that if those working for complainant as electricians on the job were not replaced by members of the defendant union, that he, the defendant Loftis would 'put up a picket line around the job' to force the complainant to employ only members of the defendant union as electricians and further that his men (members of the defendant union) would not work with the non-union men presently employed."

The original bill further alleges that the defendant Loftis and other Union officials came to the office of Superintendent Joyner and insisted that only persons who are members of the labor union should be allowed to work

at the construction site to the exclusion of those persons working at that time who were not members of the labor union.

The complainant refuses to accede to the insistencies of the defendant and avers that pursuant to the threats set out above, the Union began picketing the job site. The complaintant further says in its original bill that the picketing is unlawful and in direct violation of the Code of Tennessee.

The demurrer of the defendants does not question the factual averrments of the original bill but seems to deny the State Court's power because the matter set out in the original bill is exclusively within the province of the National Labor Relations Board.

ARGUMENT.

Under Tennessee practice, a demurrer admits the factual averments of the pleading against which the demurrer is filed, *McBrayer* v. *Dixie Mercerizing Company*, 176 Tennessee 560.

The Supreme Court of Tennessee has concluded that the averments of the original bill, as above set out, state a violation of the Tennessee "right to work" law. The sole question remains: May the Tennessee Court restrain the violation, or was its power to do so preempted from it by the enactment of the Labor Management Relations Act?

This Court has already answered the question in a definitive manner:

> "Where the State and federal laws do not overlap, no cession is necessary because the State's juris-

diction is unimpaired. This reading is confirmed by the purpose of the proviso in which the phrase is contained: to meet situations made possible by Bethlehem Steel Corp. v. New York State Labor Relations Bd., 330 U. S. 767, 91 L. Ed. 1234, 67 S. Ct. 1026, where no State agency would be free to take jurisdiction of cases over which the National Board had declined jurisdiction. See H. R. Rep. No. 245, 80th Cong., 1st Sess. 40; S. Minority Rep. No. 105, P. 2, 80th Cong., 1st Sess. 38.

"Other provisions of the Taft-Hartley Act make it even clearer than the National Labor Relations Act that the States are left free to pursue their own more restrictive policies in the matter of union-security agreements. Because §8 (3) of the new Act forbids the closed shop and strictly regulates the conditions under which a union-shop agreement may be entered, §14 (b), 29 U. S. C. A., §164(b), 9 F. C. A., Title 29, §164 (b) *was included to forestall the inference that federal policy was to be exclusive.* It reads:

" 'Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.'

"It is argued, however, that the effect of this section is to displace State law which 'regulates' but does not wholly 'prohibit' agreements requiring membership in a labor organization as a condition of employment. But if there could be any doubt that the language of the section means that the Act shall not be construed to authorize any 'application' of a union-security contract, such as discharging an employee, which under the circumstances 'is prohibited' by the State, the legislative history of the section would dispel it. See S. Rep. No. 105, 80th Cong., 1st Sess. 5-7; HR. Rep. No. 245, 80th Cong., 1st Sess. 9, 34, 40, 44;

HR. Conf. Rep. No. 510, 80th Cong., 1st Sess. 60; 93 Cong, Rec. 3554, 3559, 4904, 6383-84, 6446; 94 Cong. Rec. 3613 (April 16, 1947); *id.*, at 3617-18; HR. 3020, as reported, §13."

Algoma P. & V. Co. v. *Wisconsin Emp. Rel. Bd.*, 336 U. S. 313, 93 L. Ed. 702.

Since the petition does not present to this court a Federal question of substance not heretofore determined by this Court and since the decision of the State Court[1] in this case is in accord with the applicable decisions of this Court, respondent respectfully prays that the writ be denied.

Respectfully submitted,

WILSON SIMS,
1000 American Trust Building,
Nashville, Tennessee,
Attorney for Respondent.

BASS, BERRY & SIMS,
1000 American Trust Building,
Nashville, Tennessee,
Of Counsel.

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[1]The courts of last resort of the states wherein right to work statutes have been enacted have unanimously held that the Labor Management Relations Act does not oust from the State Court power to enforce the statute.

Woodard v. *Collier*, Georgia (1953), 78 S. E. 2d 526.

Town House, Inc., of Boston v. *Hurley*, Mass. (1950), 91 N. E. 2d 758.

Construction Labor Union, etc., et al. v. *Stephenson*, Texas (1950) 221 S. W. 2d 375.

Ostroff v. *Laundry and Dye Workers Union*, Wash. (1950), 37 Wash. 2d 595, 225 P. 2d 419.

Wisconsin ERB v. *Barbers, etc., et al.*, Wisc. (1949), 39 N. W. 2d 725.

Building Trades Council v. *Bonito*, Nev. (1955), 280 P. 2d 295.

Machinist v. *Goff-McNair Motor Co.*, Ark. (1954), 264 S. W. 2d 48.

Minor v. *Building Trades Council*, N. D. (1956), 75 N. W. 2d 139.

CERTIFICATE OF SERVICE.

I certify as attorney of record for the Respondent, Farnsworth and Chambers Company, Inc., in the above-styled and numbered cause in this court that I have this day had mailed by air mail, postage pre-paid to Cecil Branstetter, Stahlman Building, Nashville, Tennessee, attorney of record for the Petitioners, at his said proper post-office address, two true copies of this Brief in Opposition to the Granting of a Writ of Certiorari.

This 13th day of May, 1957.

Wilson Sims

WILSON SIMS,
1000 American Trust Building,
Nashville, Tennessee,
Attorney for Respondent.

Middle District. *Per Curiam:* The petition for writ of certiorari is granted and the judgment of the Supreme Court of Tennessee is reversed. *Weber* v. *Anheuser-Busch, Inc.*, 348 U. S. 468; *Garner* v. *Teamsters Union*, 346 U. S. 485. *Cecil D. Branstetter* for petitioners. *Cecil Sims* for respondent. Reported below: 201 Tenn. —, 299 S. W. 2d 8.

No. 891. LOCAL UNION 429, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A. F. OF L., ET AL. *v.* FARNSWORTH & CHAMBERS CO., INC. On petition for writ of certiorari to the Supreme Court of Tennessee,